IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPLICATION NO.48 OF 1999

The Commissioner of Income tax .. Petitioner.

V/s.

Kumbhi Kasari Sahakari Sakhar
Karkhana Limited .. Respondent.

Mr.B.M. Chatterji for the petitioner.

Mr.A.K. Jasani for the respondent.

CORAM : DR.S. RADHAKRISHNAN &
J.P. DEVADHAR, JJ.

DATED : 12TH MARCH, 2007.

P.C. :

1. The above application was admitted by this Court on 22nd April, 1999 on the following question of law :

> Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that the Bonus and Incentive Bonus paid to employees drawing salary in excess of Rs.2,500/- (Rs.1,600/-) per month was allowable as a deduction u/s.36(1)(ii) or Section 37(1) of the Income Tax Act, relying on the decision of the Hon'ble High Court in the case of Raghuvanshi Mills Ltd., (I.T. Ref.No.169 of 1987) when the payment in the assessee's case does not cover contractual payment or customary payment and also the assessee does not have profit within the meaning of second proviso to section 36(1)(ii) of the Act. The facts of the case of Raghuvanshi Mills Ltd., and that of the present case are clearly distinguishable ?

3. In the light of the judgments in CIT V/s. Mafatlal Fine Spinning and Manufacturing Co. Ltd. (263 ITR 140) and in the case of CIT V/s. Rajaram Bandekar &

Sons (Shipping) Pvt. Ltd. (237 ITR 628) both the learned counsel submitted that the matter requires consideration. Hence, statement of case is called for. The Tribunal is directed to send the statement of case as expeditiously as possible.

4. The application stands disposed of.

(DR.S. RADHAKRISHNAN, J.)

(J.P. DEVADHAR, J.)